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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

ERVIN SOMMER,

Petitioner and Appellant,

v.

LINDA HAWKES, as Trustee, etc.,

Objector and Respondent.

D054202

(Super. Ct. No. PN22173)

APPEAL from an order of the Superior Court of San Diego County, Richard G. Cline, Judge. Affirmed.

Ervin Sommer, in propria persona, appeals a postjudgment order denying his Code of Civil Procedure¹ section 683.170 motion to vacate the renewal of the 1999 monetary judgment against him in favor of Linda Hawkes, trustee of the Julia Jeppesen Hawkes Family Trust (Trust). On appeal, he contends: (1) the judgment does not apply to him; (2) the judgment has been satisfied and paid in full; (3) the trial court erred in calculating

¹ All statutory references are to the Code of Civil Procedure unless otherwise specified.

the original amount of the judgment; (4) he is entitled to an offset that exceeds the amount of the judgment; and (5) the court denied him due process of law.

FACTUAL AND PROCEDURAL BACKGROUND

On March 25, 1999, a judgment (Judgment) was entered in favor of Hawkes, presumably as trustee of the Trust, against Sommer and Ila Fern Sullivan in the amount of \$104,129.54, together with postjudgment interest at 10 percent per annum.² On June 14, 2000, on Sommer's appeal from the Judgment, we affirmed the trial court's order awarding Hawkes a total surcharge of \$100,129.54 against Sommer and Sullivan, as former trustees of the Trust, and concluded Sommer and Sullivan had not timely appealed a related order awarding Hawkes \$4,000 in attorney fees.

On or about April 13, 2001, Sullivan entered into a settlement agreement with Hawkes, pursuant to which Sullivan agreed to pay \$100,000 to the Trust and was, in return, to be released from the Judgment. That agreement provided: "It is expressly agreed and understood that this release is agreed to by the Trust . . . and that in entering into this Agreement, the Trust in no way releases or waives any rights it may have to enforce its judgment against Ervin Sommer in Case No. PN22173, or to pursue any other claims it may have against him."

² On July 20, 2009, Hawkes filed a request for judicial notice of three documents related to prior proceedings in this matter in probate court (Case No. PN22173): (1) judgment on petition for award of attorney fees and for surcharge entered on March 25, 1999; (2) abstract of judgment recorded with the San Diego County Recorder on July 28, 1999; and (3) our opinion in *Hawkes v. Sommer* (June 14, 2000, D033115) [nonpub. opn.] related to Sommer's appeal of that judgment. We grant her request for judicial notice and consider those documents in deciding this appeal. (Evid. Code, §§ 452, subds. (c), (d), 459, subd. (a).)

On April 16, 2001, Sullivan paid \$100,000 to the Trust pursuant to the settlement agreement and Hawkes then filed a release of Sullivan from the Judgment and an acknowledgement of satisfaction of judgment as to Sullivan only.

On April 26, 2001, Hawkes filed a supplemental declaration regarding postjudgment interest, stating that the total Judgment debt on April 16, 2001, was \$126,584.10, after adding postjudgment interest of \$21,454.56 to the original Judgment amount of \$104,129.54. She further stated the Trust had received \$100,000 from Sullivan in settlement of the Trust's claims against her, thereby reducing the remaining Judgment amount to \$25,584.10 as of April 16, 2001.

On August 12, 2008, Hawkes filed an application for and renewal of Judgment in the amount of \$44,608.97. In support of the application, Hawkes filed a declaration stating the remaining unpaid amount of the Judgment was \$44,608.97 after adding accrued postjudgment interest and deducting Sullivan's \$100,000 payment.³

On September 4, Sommer was served with notice of renewal of Judgment, to which was attached a copy of Hawkes's application for and renewal of Judgment. That notice stated the renewal "**extends** the period of enforceability of the judgment until 10 years from the date the application for renewal was filed. [¶] . . . **If you object** to this renewal, you may make a motion to vacate or modify the renewal with this court."

On September 8, 2008, Sommer filed a motion "in objection and to deny and strike application for renewal of judgment filed and dated August 12, 2008," which in

³ That amount also included \$254 in costs added to the Judgment and a \$20 fee for filing the application for and renewal of Judgment.

effect sought to vacate or modify the renewal of Judgment. In support, Sommer filed a declaration in which he stated the Judgment had been paid in full by Sullivan's payment of \$100,000 on April 16, 2001. He also stated \$20,000 should be removed from the Judgment's amount based on the trial court's errors in calculating and awarding the surcharges against Sullivan and him. Sommer claimed he did not owe any amount on the Judgment. Sommer further alleged, in a conclusory manner, the postjudgment interest amount was incorrectly calculated, but he did not set forth what the correct amount should be.

On October 21, 2008, Hawkes filed her opposition to Sommer's motion, noting that only Sullivan had been released from the Judgment, which had not been paid in full, and Sommer's argument that he was owed fees as a trustee had already been litigated and decided adversely to him.

On October 30, 2008, after issuing a tentative ruling denying Sommer's motion, the trial court heard arguments by the parties. The court confirmed its tentative ruling and issued a minute order denying Sommer's motion to vacate or modify the renewal of Judgment. The court concluded: "[Sommer] does not argue that the Application for Renewal should be vacated on any legally viable grounds. Instead, [he] make unmeritorious arguments that are unsupported by any legal authority. [He] has failed to prove, by [a] preponderance of the evidence, that the Application for Renewal should be vacated." Sommer timely filed a notice of appeal.

DISCUSSION

I

Renewals of Judgments Generally

A "judgment creditor may renew a judgment by filing an application for renewal of the judgment with the court in which the judgment was entered." (§ 683.120, subd. (a).) "[T]he filing of the application renews the judgment in the amount determined under Section 683.150 and extends the period of enforceability of the judgment as renewed for a period of 10 years from the date the application is filed." (§ 683.120, subd. (b).) In general, an application for renewal of a money judgment may be filed at any time before expiration of the 10-year period of enforceability under section 683.020. (§ 683.130, subd. (a).) Section 683.150, subdivision (a), provides: "Upon the filing of the application, the court clerk shall enter the renewal of the judgment in the court records." Accordingly, "[t]he statutory renewal of judgment is an automatic, ministerial act accomplished by the clerk of the court; entry of the renewal of judgment does not constitute a new or separate judgment." (*Goldman v. Simpson* (2008) 160 Cal.App.4th 255, 262, fn. omitted (*Goldman*).) "[R]enewal does not create a new judgment or modify the present judgment. Renewal merely extends the enforceability of the judgment." (*Jonathan Neil & Associates, Inc. v. Jones* (2006) 138 Cal.App.4th 1481, 1489.) "The

renewed judgment 'has no independent existence' from the original judgment."

(*Goldman*, at p. 262.)⁴

A judgment debtor may challenge a renewal of judgment by filing a motion to vacate the renewal of judgment pursuant to section 683.170, which provides:

"(a) The renewal of a judgment pursuant to this article may be vacated on any ground that would be a defense to an action on the judgment, including the ground that the amount of the renewed judgment as entered pursuant to this article is incorrect
[¶] . . . [¶] (c) Upon the hearing of the motion, the renewal may be ordered vacated upon any ground provided in subdivision (a), and another and different renewal may be entered, including, but not limited to, the renewal of the judgment in a different amount if the decision of the court is that the judgment creditor is entitled to renewal in a different amount."

"The judgment debtor bears the burden of proving, by a preponderance of the evidence, that he or she is entitled to relief under section 683.170. [Citations.] On appeal, we examine the evidence in a light most favorable to the order under review and the trial court's ruling for an abuse of discretion. [Citation.]" (*Fidelity Creditor Service, Inc. v. Browne* (2001) 89 Cal.App.4th 195, 199.)

II

Denial of Motion to Vacate Renewal of Judgment

Sommer contends the trial court erred by denying his motion to vacate the renewal of Judgment.

⁴ A renewed judgment is not appealable. "Instead, it is the order denying a motion to vacate renewal of a judgment that is appealable, as an order after (the underlying) judgment. [Citation.]" (*Goldman, supra*, 160 Cal.App.4th at pp. 262-263, fn. 4.)

A

Sommer first asserts the Judgment applied only to Sullivan and does not apply to him. However, the record does not support that assertion. The Judgment applied to both Sullivan and Sommer, stating: "[Hawkes] is entitled to judgment against Respondents [i.e., Sullivan and Sommer]. [¶] NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that [Hawkes] shall have and recover from Respondents [i.e., Sullivan and Sommer] the total sum of \$104,129.54" Furthermore, the settlement agreement between Hawkes and Sullivan provided for the release only of Sullivan and expressly provided Sommer was *not* released from the Judgment. The record on appeal supports the conclusion that Sommer is subject to the Judgment.

B

Sommer also asserts the Judgment has been paid in full and satisfied. However, the record does not support that assertion. Sullivan paid \$100,000 toward the Judgment amount pursuant to the settlement agreement, leaving an unpaid amount of \$25,584.10 as of April 16, 2001. Sullivan's payment of \$100,000 toward the Judgment did not satisfy the entire unpaid amount of the Judgment. That settlement amount was not only less than the original \$104,129.54 Judgment amount, but was also less than the Judgment amount, including accrued postjudgment interest, of \$125,584.10 as of April 16, 2001. Therefore, Sullivan's settlement payment did not pay or otherwise satisfy the Judgment in full.⁵ By

⁵ Although Sommer asserts in his reply brief that Sullivan purportedly made an additional settlement payment of \$15,000 on March 29, 2001, there is no evidence in the record on appeal to support that assertion. There is substantial evidence to support an

accrual of postjudgment interest on the unpaid Judgment amount from April 16, 2001, through August 12, 2008, the unpaid amount had increased to \$44,608.97 as of the date Hawkes filed her application for and renewal of Judgment. The Judgment has *not* been paid in full and satisfied.

C

Sommer also asserts the trial court erred in calculating the original amount of the Judgment because it awarded Hawkes improper amounts. He argues the court erred in awarding Hawkes: (1) \$8,182.61 for Sullivan's and Sommer's mismanagement of a Trust property; (2) \$6,900 for self-dealing amounts paid to Sullivan's husband; and (3) \$4,000 for attorney fees paid to Hawkes's attorney. However, we expressly upheld the court's award of the first two items in Sommer's appeal of the Judgment (*Hawkes v. Sommer, supra*, D033115) and concluded he had not timely appealed the court's award of the third item. (*Ibid.*) Therefore, the doctrines of res judicata and collateral estoppel bar Sommer from challenging those portions of the Judgment. In any event, an appeal challenging an order denying a section 683.170 motion to vacate a renewal of judgment cannot be used to challenge the original judgment. (*Goldman, supra*, 160 Cal.App.4th at pp. 262-263, fn. 4.) Sommer cannot challenge in this appeal any of the trial court's decisions in awarding Hawkes the original Judgment.

D

Sommer apparently asserts he is entitled to an offset that exceeds the amount of the Judgment. By citing to his section 683.170 motion papers, he apparently argues he is

implied finding by the trial court that Sullivan paid only \$100,000 to settle the Judgment against her.

owed \$343,098 by Hawkes for trustee fees for services he rendered to the Trust through 1997 (\$149,000), interest on that unpaid amount from 1997 through 2008 (\$149,000), costs and expenses he incurred from 1997 through 1998 (\$40,000), and other miscellaneous amounts (\$5,098). However, by denying Sommer's motion to vacate the renewal of Judgment, the trial court implicitly rejected his claim for those fees, costs, and interest. Based on our review of the record, we conclude there is substantial evidence to support the trial court's finding. The record does not contain any evidence showing Sommer had pursued his claim for unpaid trustee fees by filing an action or motion against Hawkes or had otherwise established his right to an offset. Furthermore, his purported offset does not relate to any services he provided after the Judgment or to his section 683.170 motion to vacate the renewal of Judgment. At the hearing on his motion, he admitted his claim existed as of the time of the Judgment and he had never filed any action or motion to assert that claim. The court did not abuse its discretion by implicitly finding Sommer was not entitled to all or part of the offset amount he asserted. In any event, the doctrines of res judicata and collateral estoppel preclude Sommer from challenging his claim to trustee fees and related amounts, which issues were or could have been raised in the original action resulting in the Judgment we affirmed on appeal. (*Goldman, supra*, 160 Cal.App.4th at pp. 262-263, fn. 4.)

E

Sommer asserts the trial court denied him due process of law by denying his section 683.170 motion to vacate renewal of the Judgment. He asserts the trial judge was biased and prejudiced against him and pro per litigants in general. However, Sommer's

citations to the record do not support those assertions. The fact that a trial court may issue adverse rulings against a party does not show it is biased or prejudiced against that party. We presume the trial court acted with honesty and integrity. (*People v. Chatman* (2006) 38 Cal.4th 344, 364.) Sommer has not carried his burden on appeal to show the trial court was biased or prejudiced against him or otherwise deprived him of due process of law. (*Betz v. Pankow* (1993) 16 Cal.App.4th 919, 926.)

F

Because substantial evidence supports the trial court's finding that Sommer did not show he had any defense to an action on the Judgment, we conclude the court did not abuse its discretion by denying his section 683.170 motion to vacate renewal of Judgment. Sommer has not carried his burden on appeal to show the trial court abused its discretion in denying that motion.

DISPOSITION

The order is affirmed. Costs on appeal are awarded to Hawkes.

McDONALD, J.

WE CONCUR:

McCONNELL, P. J.

AARON, J.